



GERALD C. MANN

~~GERALD C. MANN~~
ATTORNEY GENERAL

THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

Affirmed by C-625

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. O-2380

Re: Expenditure of appropriation for
supplies for fiscal year ending
Aug. 31, 1940 for supplies to be
delivered during fiscal year end-
ing Aug. 31, 1941.

In your letter of May 20, 1940, you state that you anticipate there will be a balance in your appropriation of \$11,000.00 for supplies for the fiscal year ending August 31, 1940, and that you desire to use the same for purchasing supplies in the month of August, which supplies may or may not be delivered during the month of August, 1940 for the general maintenance of the Comptroller's Department.

You ask the opinion of this department upon the question whether you are authorized to make such purchase and pay for the same out of the appropriation made for the fiscal year ending August 31, 1940.

Section 1 of the General Appropriation Bill, known as Senate Bill 427, Acts Regular Session, 46th Legislature, begins as follows:

"That the several sums of money herein specified or so much thereof as may be necessary, are hereby appropriated out of any moneys in the State Treasury not otherwise appropriated or out of special funds as may be shown, for the support and maintenance of the several departments and agencies of the State government for the two year period beginning September 1, 1939, and ending August 31, 1941."

In itemizing the appropriation for the various departments covered in such bill, the Legislature followed the procedure indicated below:

"For the years ending	
August 31, 1940	August 31, 1941
"Item . . . \$11,000.00"	\$11,000.00"

It was obviously the design and purpose of the Legislature, in following this procedure, as it has been in the past, to provide one certain sum of money for the expenditures necessary to carry on the activities of the various departments for the fiscal year ending August 31, 1940 and a separate and distinct sum of money for the same purpose for the fiscal year ending August 31, 1941. The item provided for the fiscal year ending August 31, 1940

is intended to be available only for such expenditures as are necessary to carry on the functions of that department during that fiscal year. The same is true with reference to the item provided for the fiscal year ending August 31, 1941. The item provided for the fiscal year ending August 31, 1940 is not available to defray expenditures necessary to carry on the functions of the department during the fiscal year ending August 31, 1941, and conversely, the item provided for the fiscal year ending August 31, 1941 is not available for expenditures in carrying on the functions of the department for the fiscal year ending August 31, 1940. Any unexpended balances in the appropriations for the fiscal year ending August 31, 1940 are not intended to be available to supplement the amounts provided for carrying on the functions of the department for the fiscal year ending August 31, 1941, but on the contrary, such unexpended balances lapse. See Fulmore v. Lane (Sup. Ct.) 140 S.W. 405, 1082.

It would seem from your statement that the supplies may or may not be delivered during the month of August 1940, that you desire to purchase such supplies for use in carrying on the functions of your department during the fiscal year ending August 31, 1941. From what we have said above, it follows that this may not be done.

We do not hold that supplies purchased during the current fiscal year for the operation and maintenance of a department during the year may not be paid for out of the current year's appropriation simply because, through error in judgment, more than was necessary was ordered. Government is a going business concern, and much of that business must of necessity be left to the honest discretion of those to whom management is confided. In the very nature of things, exact estimates are impossible; and legislative enactments must be interpreted, if possible, in the light of the realities. Of course, therefore, supplies may be paid for out of the year's appropriation, though a part of them may be carried over for use during the next fiscal year. We simply hold herein that the balance in an appropriation for supplies for the operation and maintenance of a department for one fiscal year may not be deliberately used for the purchase of supplies not needed for the current year's operations, but intended for use only in the subsequent fiscal year.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ R. W. Fairchild

R. W. Fairchild
Assistant

RWF:MR:egw

APPROVED JULY 26, 1940
/s/ GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

This opinion considered and
approved in limited conference.